

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Dec 16, 2020**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

BRANDON KEITH HUTCHINSON,

Petitioner,

v.

JEFFREY A. UTTECHT,

Respondent.

No. 2:20-cv-00299-SMJ

**ORDER GRANTING MOTION TO  
DISMISS WITHOUT PREJUDICE**

Before the Court, without oral argument, is Petitioner Brandon Keith Hutchinson's Motion to Dismiss Without Prejudice, ECF No. 8. Petitioner, currently housed at Coyote Ridge Corrections Center, is proceeding *pro se* and the \$5.00 filing fee has been paid. Respondent has not been served.

On September 18, 2020, the Court directed Petitioner to amend his habeas corpus petition as it failed to clearly present the grounds for federal habeas relief, failed to show how each apparent claim for relief has been presented to the highest state court, and failed to show that the petition is not time-barred. ECF No. 5 at 2–8.

In his instant Motion, Petitioner states that he moves to dismiss this action without prejudice, “so legal counsel can effectively represent [his] contentions to

1 the Court if deemed to have merit.” ECF No. 8. Petitioner should be mindful of the  
2 one year period of limitations set forth in 28 U.S.C. § 2244(d). Failure to timely file  
3 a federal habeas petition would be cause for dismissal. Petitioner is advised that the  
4 one year limitations period is not statutorily tolled during the pendency of a federal  
5 habeas petition, *see Duncan v. Walker*, 533 U.S. 167 (2001), and has continued to  
6 run while the present petition has been before this Court, unless Petitioner also had  
7 properly filed postconviction proceedings pending in the state courts. *See* 28 U.S.C.  
8 § 2244(d)(2); *see also Artuz v. Bennett*, 531 U.S. 4, 5 (2000).

9 Accordingly, **IT IS ORDERED:**

- 10 1. Petitioner’s Motion to Dismiss Without Prejudice, **ECF No. 8**, is  
11 **GRANTED** pursuant to Federal Rule of Civil Procedure 41(a).  
12 2. The Petition, ECF No. 1, is **DISMISSED WITHOUT PREJUDICE**.  
13 3. The Clerk’s Office is **DIRECTED** to enter **JUDGMENT** of dismissal  
14 without prejudice.  
15 4. The Clerk’s Office is **DIRECTED** to **CLOSE** the file.

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